

RESOLUTION NO.

Resolution of the Planning Commission of the City of San Jose granting, subject to conditions, a Conditional Use Permit to use certain real property described herein to allow for a project on the northwest corner of Market Street and Balbach Street on a 4.05-gross-acre site in the CG Commercial General Zoning District for the operation of a surface parking lot and related site improvements.

FILE NO. RCP 03-026

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on September 23, 2003, an application (File No. RCP03-026) was filed for a Conditional Use Permit for the purpose of the operation of a 4.05-gross-acre surface parking lot and associated site improvements, on that certain real property (hereinafter referred to as "subject property"), situated in the CG Zoning District, located on the northwest corner of Market Street and Balbach Street, San Jose, CA and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, this Planning Commission has reviewed and considered the environmental impacts of this project which were addressed by a Final EIR entitled, "Downtown Strategy Plan Supplemental EIR, Resolution No. 68839," and findings were adopted on April 27, 1999, by the City of San Jose City Council; and

WHEREAS, pursuant to and in accordance with Chapter 20.44 of Title 20 of the San Jose Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This is a Conditional Use Permit (CUP) to allow the expansion of the Market/Balbach parking lot from 2.41 acres to 4.05 acres, with site improvements including lighting, automatic parking payment machines, and fencing.
2. The project site is approximately 4.05 acres and is located in the Commercial General (CG) Zoning District.
3. A Conditional Use Permit is required the expansion of an off street parking lot in the CG Zoning District .
4. The project site is designated Public/Quasi Public on the San Jose 2020 General Plan Land Use/Transportation Diagram.
5. The environmental impacts of this project were addressed by Final Supplemental EIR entitled, "Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999.
6. The subject site is surrounded by a variety of commercial uses, including the convention center, office space and a nightclub; and a residential neighborhood is located to the south of the project site.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. Upon issuance of this Conditional Use Permit, the project will comply with the provisions of the Commercial General (CG) Zoning District in that off-street parking lots not associated with a particular use require the approval of a Conditional Use Permit.
2. The project conforms to the with the San Jose 2020 General Plan in that it proposes the operation of an off street parking lot on a lot designated Public/Quasi Public.
3. The project conforms to the California Environmental Quality Act in that is does not create impacts not previously addressed in the Downtown Strategy Plan Final Supplemental EIR.
4. The proposed use complies with the parking provisions of Downtown Parking Management Zone, as described in Municipal Code, Section 20.90.500.

FINDINGS

Finally, based upon the above-stated analysis and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area because the proposed off street parking lot is consistent with the commercial uses of the surrounding area and the proposed project will improve the conditions on the lot and will improve the safety of the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site because the proposed demolition and new parking lot will not alter or diminish the value of adjacent businesses, raise new safety concerns, or create visual impacts; in fact the project will improve the look of the vacant lot. The project will add lighting to the site which will improve safety in the area; or
 - c. Be detrimental to public health, safety or general welfare because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, "Downtown Strategy Plan EIR" (Resolution No. 68839) and police reports of past experience in the area corroborate that such use will not adversely affect the public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
 - b. By other public or private service facilities as are required in that the scale of the project will not necessitate expansion of existing service facilities.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of the following conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all requirements of the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall not be operated in a manner that creates a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Plan Conformance. The project shall be developed and operated in conformance with the plans entitled, "Market/Balbach Parking Lot Expansion", dated August 19, 2003 on file with the San Jose Redevelopment Agency.
4. Entrance Hours of Operation. Hours for entrance into the parking lot shall be limited to 6:00 AM to 10:00 PM Sunday through Thursday and 6:00 AM to 11:00 PM on Friday and Saturday.
5. Security. Uniformed Security guards shall monitor the parking lot at the discretion of the City of San Jose and the Entertainment Zone Police.
6. Gate Closures. The gates facing Balbach Street, Viola Street, and Almaden Avenue shall be closed after 10:00 PM Sunday through Thursday and 11:00 PM Friday and Saturday so

as to move traffic to Market Street and keep late-night traffic out of the Market/Almaden neighborhood.

7. Modifications. The Executive Director of the Redevelopment Agency shall have the authority to approve minor design changes to the design of the parking lot through an Adjustment Permit.
8. Short Term Uses. The parking lots may be used for short-term uses from time to time during any given year. In the event that short term uses take place, the following shall apply:
 - a. The proposed use shall comply with the Occupational Safety and Health Act.
 - b. All tents and equipment shall be set back at least 20 feet from the southernmost street frontage (Balbach Street frontage).
 - c. Uses shall not be in operation before 9:00AM or after 11:00 PM.
 - d. Any generators for the short term use shall be acoustically enclosed and located at the north side of the parking lot.
 - e. Special Events on the subject site shall conform to the City Council's "Guidelines for Events Held on City-Owned and City-Operated Parking Facilities, Including Redevelopment Agency Parking Facilities".
9. Trash, Refuse, Garbage and Litter.
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontages.
 - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, daily.
 - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.

CONDITIONS SUBSEQUENT

1. Revocation, Suspension, Modification. This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission or by the City Council on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100.350, of the San Jose Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

c. The use presently conducted creates a nuisance.

APPROVED this 5th day of November, 2003, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

Chairperson

ATTEST:

Stephen M. Haase, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.